



# **MOTOR CARRIER FACTORS GROUP FACTUAL REPORT**

**Victoria, TX**

**HWY-08-MH-011**

(28 Pages)



**NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF HIGHWAY SAFETY  
WASHINGTON, D.C. 20594**

**MOTOR CARRIER GROUP  
FACTUAL REPORT**

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**A. ACCIDENT**

Type: Motorcoach, overturn  
Date and Time: January 2, 2008, 4:13 a.m. CST  
Location: Northbound US Rt. 59, MP642A at the merge with Spur 91  
Victoria, Victoria County, Texas  
Vehicle #1: 2005 Volvo Model 9700, 47-Passenger Motorcoach  
Vehicle #2: Ford Ranger pickup truck  
Motor Carrier: International Charter Services  
Fatalities: 1  
Injuries: 48  
  
NTSB#: **HWY-08-MH-011**

**C. ACCIDENT SUMMARY**

On January 2, 2008 about 4:13 a.m. a 2005 Volvo 47-passenger motorcoach with 47 passengers on-board was proceeding northbound on US Highway 59 about five miles south of Victoria, Texas. The motorcoach operated by a 47-year old driver entered a 1,000-foot, 3.5-degree curve to the left. The motorcoach drifted off the right edge of the roadway and came back across both lanes, descending a three percent downgrade, when the left side of the motorcoach departed the left edge of the roadway entering an earthen area. While under braking, the motorcoach continued approximately 222 feet with the left wheels on the earthen area and the right wheels on the paved shoulder. The motorcoach re-entered the roadway for about 40 feet when the driver overcorrected and the motorcoach began to yaw to the left in a counter-clockwise rotation. The motorcoach overturned onto its right side. After overturning, the right rear of the motorcoach struck a guardrail on the right side of the roadway. The motorcoach slid on its right approximately 112 feet where it came to rest across the roadway.

A 2001 Ford Ranger pickup truck traveling northbound on US Route 59 struck the underside of the motorcoach forward of the rear axle. This collision resulted in damage to the motorcoach underside and cargo bay, and heavy damage to the front of the pickup truck.

As a result of the initial motorcoach rollover, one passenger was fatally injured, 46 passengers and the driver received various degrees of injuries from minor to serious. The driver of the pickup truck sustained minor injuries when the pickup truck subsequently struck the undercarriage of the motorcoach.

The weather was cloudy and the roadway was dry at the time of the accident.

## **DOCUMENTS OBTAINED**

- Drivers' Files
- Drivers, Log Book Pages (Oct – Dec 2007, Jan 2008)
- Vehicle Maintenance Files
- SAFER Reports
- SAFESTAT Reports
- Passenger Lists and Operating Dates
- Miscellaneous Company Operations Files
- FMCSA Compliance Review and Safety Audit
- Vehicle Registration Forms
- Texas Corporation Records
- Laredo TX, Juarez-Lincoln Bridge Motorcoach Crossings Inspection Records and Counts

## **D. DETAILS OF THE INVESTIGATION**

The content of this report includes an examination of four (4) companies that have business relationships that are related to the investigation of this accident. This examination includes the operations of each company, their compliance with Federal and State requirements, and the registration of the accident vehicle in the United States.

### **1. Flores Charter and Tours Profile<sup>1</sup>**

Flores Charter and Tours was first incorporated in Texas on August 6, 1999, in Houston. Texas Secretary of State records indicate that the company was owned and operated by Baltazar Flores. The company was registered with the Federal Motor Carrier Safety Administration (FMCSA) as an interstate passenger carrier<sup>2</sup> and was issued USDOT number 827375. The company initially operated with one motorcoach.

Texas Secretary of State records show that the company's authority to operate intrastate was suspended twice, both for "tax forfeiture": (1) March 2002, reinstated in December 2003 and (2) February 2006, no reinstatement. This suspension of authority applied to

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<sup>1</sup> See Attachment #1

<sup>2</sup> See 49 USC 13902 and 49 CFR 390.5. A transportation company (cargo or passenger) must register with the FMCSA to meet the definition of an interstate motor carrier.

intrastate operations only.

In February 2006 the company requested (via letter) to the FMCSA that their interstate operating authority be rescinded because they were going out of business.

There is no record of any enforcement, compliance review, or roadside inspection data in the FMCSA data bank for this company. This company is formally no longer in business, however, the name “Flores” still appears on motorcoaches that are owned by Baltazar Flores – see below discussion.

## 2. Capricorn Bus Lines Inc. Profile<sup>3</sup>

According to Texas Secretary of State records Capricorn Bus Lines Inc. incorporated in February 2004. The company was owned and operated by Olga and Baltazar Flores (owners of Flores Bus Lines). In January 2006 the company’s intrastate authority to operate as a passenger carrier was suspended for “Tax Forfeiture” and never reinstated. This suspension of authority applied to intrastate operations only. Texas Secretary of State records show the company currently “Inactive”.

The company registered with the FMCSA as an interstate carrier of passengers in March 2007 and listed one motorcoach in their fleet. They were issued USDOT number 1618407. They qualified as a “New Entrant” in the FMCSA New Entrant Program and would have been subject to a Safety Audit within six months. However, in July of 2007 the company withdrew their request for operating authority and no safety audit was performed. They are now listed as “Inactive”.

There are no records of roadside inspections or violations for the company. A check of the company’s Inspection Selection System (ISS)<sup>4</sup> records shows a score of 94 – Inspect; Basis for Inspection – Insufficient Data.

Capricorn purchased two 2005 Volvos (VIN 3CES5J12755101398 and VIN 3CER8J22X55103537 [accident vehicle]) in Mexico in April 2006. In October 2007 they

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<sup>3</sup> See Attachment #2

<sup>4</sup> **The Inspection Selection System (ISS-D)** is a decision-aid for commercial vehicle roadside driver/vehicle safety inspections, which guides safety inspectors in selecting vehicles for inspection. **ISS Inspection Value:** The ISS Inspection Value is based on the motor carrier's safety performance data. In the case when there is sufficient motor carrier safety performance data available, the value is assigned from information derived from SafeStat results, which reviews safety performance in areas of crash history, inspection history, driver history, and safety management experience. When a motor carrier has little information on file, the ISS Inspection Value is based on an 'Insufficient Data Algorithm', which determines the inspection value by weighting the carrier size and the number of past inspections. Refer to the [Inspection Selection System](#) description, for an explanation of the value's calculation.

**ISS Recommendation:** The ISS Inspection Value forms the basis for the ISS recommendation. The recommendation ranges from 'Inspect', for motor carriers with poor safety performance in one or more Safety Evaluation Areas (SEAs) and for carriers with little or no safety data, to 'Pass' for carriers with good safety performance data. The three recommendations listed are below.

Recommendation	ISS Inspection Value
<b>Inspect</b> ( <i>inspection warranted</i> )	75-100
<b>Optional</b> ( <i>may be worth a look</i> )	50-74
<b>Pass</b> ( <i>no inspection required</i> )	1-49

registered the two 2005 Volvo motorcoaches in Los Angeles, CA under the name Capricorn Bus Lines. The Safety Board contacted the occupants of the Los Angeles address. The company at that location was Salcido Tours,<sup>5</sup> a small bus company that has 'line runs' to several locations in Mexico from the Los Angeles area. The owner of the company said he did not know the owners of Capricorn Bus Lines and was unaware of any bus registered at his address that was not his own. Immediately after registering the vehicles in California, the 2005 Volvos were registered in Texas.

In December 2007 the registration of these vehicles was transferred from California to Texas, obtaining Texas license plates, with an address in Dallas, TX. The Safety Board contacted the occupants of the address given on the registration in Dallas, TX. There are three companies registered to do business at that location; Autobuses Zacatecanos, Century Bus Lines, and Green River Busses LLC.<sup>6</sup> The owner of the Autobuses Zacatecanos said that Capricorn had previously been at that location but had moved and there was no relationship between the companies in Dallas and Capricorn. He was unaware of any of Capricorn's buses being registered at his location. He also indicated that he assists many (up to 50) other bus companies register their vehicles in California and then transfer those registrations to other states. (See registration section below.)

In August 2007 the owner of Capricorn purchased two 2008 Volvo motorcoaches (VIN 3CER8G12185120994 and VIN 3CER8G12385120995) in Mexico. The vehicles were registered in California in November and December 2007. The two 2008 Volvos are still registered in California. All the vehicles were registered at locations in Los Angeles and in Dallas.

In May 2007 the owner of Capricorn entered into a lease agreement<sup>7</sup> with International Charter Services, Houston TX to operate 5 vehicles:

- |               |                                      |
|---------------|--------------------------------------|
| ➤ 2005 Volvo  | 3CER8J22X55103537 [accident vehicle] |
| ➤ 2005 Volvo  | 3CES5J12755101398                    |
| ➤ 2005 Volvo  | 3CES5J12655101425 [no longer in use] |
| ➤ 2004 Scania | 3BEKYX2C52351755 [no longer in use]  |
| ➤ 2002 Scania | 3BEKYX20123531753 [no longer in use] |

On December 7, 2007 two additional vehicles were added:

- |              |                                |
|--------------|--------------------------------|
| ➤ 2008 Volvo | 3CER8G12185120994              |
| ➤ 2008 Volvo | 3CER8G12385120995 <sup>8</sup> |

The terms of the lease indicate that International Charter Services would pay the owner of Capricorn \$12,500 per month for the use of the vehicles. Insurance on the vehicles was to be obtained by International, but all other costs including maintenance, repairs, permits,

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<sup>5</sup> A sign on the building indicates the company there was "Salcido Tours." Salcido Tours has a US DOT #1505841 and a registered address in Los Angeles, CA. See Attachment #3

<sup>6</sup> See Attachments #4

<sup>7</sup> See Attachment #5 - The lease was valid for one year. This is the second such one-year lease between the two companies.

<sup>8</sup> Capricorn listed this vehicle as a year 2008 model on the lease agreement, but it was registered in California as a 2007.

taxes, fines due to violations by US or Mexican authorities were to be paid by the owner of Capricorn. The vehicles were then used by Capricorn, and driven by Capricorn drivers, under the operating authority of International Charter Services. (See section on International Charter Services below.) Records are lacking regarding the part of the agreement that enumerated any compensation (if any) for the use of the buses by Capricorn from International.

The lease also requires the owner of Capricorn to be responsible for compliance with US DOT and Mexican authorities regulations, such as driver qualification (DQ) files, maintenance files, drug testing programs, DOT inspections<sup>9</sup>, license plates, and record keeping (i.e. driver log books, post-trip inspections, passenger manifests, etc.), and driver background checks.

Capricorn operates a line run<sup>10</sup> from Houston, TX to Monterrey, Nuevo Laredo, MX and back. The company employs 6 drivers and owns and operates four vehicles<sup>11</sup>. When the company hires drivers they are given a short two or three day training on how the motorcoaches operate, the routes to be taken, and how the tickets are to be processed. The company does not provide additional driver training, safety briefings, or material on driver health and safety. The owners' daughter reviews logbooks; however, she has no training on hours of service regulations.

Maintenance on the vehicles is conducted in Mexico at the company's terminal in Monterrey. The Safety Board obtained copies of the maintenance and repair records; however, they were written in Spanish. The company does not appear to have a regularly scheduled maintenance program, but instead repairs the vehicles on an 'as needed' basis. (See Vehicle Group Chairman's report on the mechanical condition of the accident vehicle.)

The authority to run the vehicles in interstate commerce (i.e. across the US – Mexican border) belonged to International Charter Services and was used by Capricorn via the vehicle lease agreement. Capricorn sold the tickets (\$40 one-way and \$70 round trip) and hired the drivers. Drivers were paid \$125 per one-way trip. Two vehicles were in operation in the line run at a given time. One vehicle was scheduled to leave Houston, TX, to Monterrey, MX, and the other vehicle was scheduled to leave Monterrey, MX, to Houston, TX. Both vehicles departed their respective locations at 7:00 pm. They generally arrived at their respective destinations about 8 to 9 hours later. A review of a sample of driver logs indicated that the motorcoaches stopped in Victoria, TX, for about ½ hour to provide a rest stop; and again in Laredo, TX, for about ½ hour to cross the border. (For additional details regarding these trips see section on Accident Driver's Log Book.)

The FMCSA conducted a single post-accident compliance review that included both Capricorn and International on January 4, 2008. A final rating of "Conditional" was issued to International on January 24, 2008. Capricorn did not receive a rating due to their not having operating authority. They were included however, due to the record

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<sup>9</sup> See Section on International Charter Services for violation history on the vehicles and drivers.

<sup>10</sup> A line run is a regularly scheduled trip from one location to one or more locations and then back to the original location. This is the only destination(s) to which a company operates.

<sup>11</sup> The company owns other vehicles, as noted above, but they are not operational.

keeping they maintained per their lease agreement with International. (See section on International Charter Services below for details.)

At the time of the field phase of this investigation the owner of Capricorn was in Mexico and unavailable for interview; therefore, additional information is unavailable.

### **3. International Charter Services Inc. Profile<sup>12</sup>**

International Charter Services incorporated on December 6, 2004 in Houston, TX. The company is owned and operated by Maria Rodriguez and is managed by her ‘common-law husband’, Juan Chavez. (See section on Transportes Chavez.) The company originally operated with only intrastate authority with 2 drivers and one motorcoach; a 2000 Dina VIN 3ABBBFHA3Y5002478.

In June 2005 the company applied for and was granted interstate operating authority from the FMCSA and was issued US DOT number 1366683 to operate as a for-hire passenger carrier operating in Texas and Mexico. The company qualified as a “New Entrant” under the FMCSA’s New Entrant Program and received a Safety Audit on November 17, 2005<sup>13</sup>. The FMCSA auditor noted that all of the required carrier programs were in place and that the carrier was knowledgeable of the Federal Motor Carrier Safety Regulations (FMCSRs). Prior to this accident the company had not been subject to a Compliance Review and therefore was not rated.

In June 2006<sup>14</sup> the company added the following vehicles to their carrier profile with the State of Texas:

➤ 2005 Volvo	3CER8J22X55103537 [accident vehicle]
➤ 2005 Volvo	3CES5J12755101398
➤ 2005 Volvo	3CES5J12655101425 [no longer in use] <sup>15</sup>
➤ 1997 VanHool	YE2TA76B3U2029006
➤ 2004 Scania	3BEKYX2C52351755 [no longer in use]
➤ 2000 Prevost	2PCH33419T1011313

On December 7, 2007 two additional vehicles were added:

➤ 2008 Volvo	3CER8G12185120994
➤ 2007 Volvo	3CER8G12385120995

**All the above vehicles were obtained from and are owned by Capricorn Bus Lines.<sup>16</sup>**

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<sup>12</sup> See Attachment #6

<sup>13</sup> See Attachment #7

<sup>14</sup> Based on information contained in the 2007 lease agreement, TXDOT corporation records, and confirmation by the manager of International there was an original agreement between Capricorn and International in 2005, however, documentation is lacking.

<sup>15</sup> The carrier has represented that all the vehicles shown here with the “no longer in use” notation are not currently being operated. However, FMCSA inspection records show that these vehicles were subject to roadside or Border crossing inspections between June 2006 and November 2007

<sup>16</sup> For additional information on vehicles; inspections and registration see Section 7 - Vehicles below. As of 01/15/2008 the lease agreement between Capricorn and International is cancelled and the vehicles are no longer registered with International.

The company also owned a 2002 Scania (purchased in 2005) 3BEKYX20123531753 [no longer in use]

Currently the three 2005 Volvos, the 2004 Scania, the 1997 VanHool, and the 1996 Prevost that are also authorized for use in intrastate operations. The company operates only about 5 charter trips per month.

Seven drivers, employed by Capricorn Bus Lines, operate the Houston TX to Monterrey MX run. International itself is listed with the FMCSA as operating with 8 vehicles and 4 drivers. Four Volvos (two 2005 and two 2008) are leased from Capricorn and not used in International's operations.

FMCSA records<sup>17</sup> as of 02/08/2008 indicated that the company had been subject to 103 roadside inspections in the 24-month period between 01/01/2006 and 01/01/2008; this included 80 vehicle inspections and 103 driver inspections. Records indicated that the vehicle out-of-service rate was 11.2 percent compared to the national average of 23.4 percent and the driver out-of-service rate was 2.9 percent as compared to the national average of 6.8 percent. Records indicated no accidents in that same period of time.

Records in the current Motor Carrier Management Information System (MCMIS) for vehicle inspections from 12/31/2006 to 01/08/2008 show 50 inspections. Thirty-eight of those inspections were conducted at the Juarez-Lincoln Bridge (Border crossing)<sup>18</sup>. Of those 38 inspections 2 were Level 1, 29 were Level 2, and 7 were Level 3<sup>19</sup>. The remainder of these inspections was conducted at various roadside locations, many on US Route 59, the most direct route between Houston to Laredo. There were 5 inspections that resulted in Out-of-Service (OOS) violations for equipment defects.

A post-accident FMCSA Compliance Review<sup>20</sup> was conducted on 01/04/2008 with a final rating of "Conditional" issued on 01/24/2008<sup>21</sup>. The reason for the "Conditional"

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<sup>17</sup> SAFER website [www.safersys.org](http://www.safersys.org) - a public website sponsored by the FMCSA providing information on registered motor carriers. The records include the Volvos leased to International and operated by Capricorn, because the vehicles are driven under International's operating authority.

<sup>18</sup> This is the crossing used by International Charter Services, as it is for most motor coaches crossing the US-Mexican border.

<sup>19</sup> There are 7 Levels (or categories) of roadside inspections. A Level 1 inspection includes the driver and vehicle (including an inspection of the components on the under carriage such as brake adjustment; a Level 2 is the driver only; a Level 3 is the vehicle only (a walk around inspection and does NOT include an inspection of the vehicle's undercarriage components); Level 4 is a special item inspection; Level 5 is a vehicle only inspection at the carrier's terminal; Level 6 is a Hazardous Materials inspection; Level 7 is a Jurisdictional Mandated Vehicle Inspection – for specific areas of concern.

<sup>20</sup> See Attachment #7a

<sup>21</sup> **Safety ratings:** (1) **Satisfactory** safety rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in §385.5. (2) **Conditional** safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in §385.5 (a) through (k). (3) **Unsatisfactory** safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in §385.5 (a) through (k). (4) **Un-rated** carrier means that a safety rating has not been assigned to the motor carrier by the FMCSA.



rating was an “Unsatisfactory” rating in the Driver Factor (Factor 2) and a “Conditional” rating in the Vehicle Factor (Factor 4).

- The “Unsatisfactory” rating in the Driver Factor was mainly due to false, incomplete, and/or missing log pages. Records were also missing for the company’s drug and alcohol program; required records were missing from the driver’s qualification file; no annual driver violation reviews were conducted; and the driver admitted he was not wearing his seat belt at the time of the accident.
- The “Conditional” rating was mainly based on incomplete vehicle documentation (i.e. Driver Vehicle Inspection Records) and failure to document repairs.

The Compliance Review included a review of the documentation required to be kept by a motor carrier, but were being kept by Capricorn Bus Lines, under the lease agreement with International. Therefore, Capricorn was not party in the Compliance Review of International, per definition of a Motor Carrier in 390.5, but their record keeping was utilized in the audit. The safety rating only applied to International.

*“Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, this definition includes the terms employer and exempt motor carrier.”*

#### **4. Transportes Chavez Inc. Profile<sup>22</sup>**

Transportes Chavez Inc. was incorporated in Texas on May 2000. The owner was listed as Juan Chavez, the common-law husband of Maria Rodriguez, owner of International Charter Services. He also is the manager of International Charter Services. The company operates in interstate and intrastate commerce as a common carrier of passengers. It was issued US DOT number 467283 in 1992 and utilizes 10 motorcoaches and 11 drivers in its operation. They operate a charter service and a line run from Houston TX to San Luis Potosi, MX.

Transportes Chavez was the subject of an FMCSA Compliance Review in September 2006 and received a “Satisfactory” rating. The SAFER report indicates that the company has been subject to 302 roadside inspections in the 24 months between 01/10/2006 and 01/10/2008. There were 254 vehicle inspections with 32 OOS violations and an OOS rate of 12.6 percent as compared to the national average of 23.14 percent. There were 302 driver inspections with 7 OOS violations and an OOS rate of 2.3 percent as compared to the national average of 6.8 percent. The company has an ISS rating of 73 – Optional Inspection.

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<sup>22</sup> See Attachment #9

## 5. Accident Driver Information

### 5.1 – Driver’s License History<sup>23</sup>

Capricorn Bus Lines employed the 42-year-old accident driver on 9-16-2007<sup>24</sup>. He held a valid Texas Class “B” Commercial Driver’s License (CDL) most recently issued in September 2007 that was due to expire in September 2008. The license had a Passenger (P) endorsement and an “M” restriction. The “M” restriction limited him to driving intrastate only. The reason for the intrastate limitation was that the driver, when applying for his CDL in 1997 completed a form indicating that he only wanted to drive intrastate. (See Accident Driver’s License Documentation.) When questioned as to why he had selected to drive only intrastate, he indicated that he was unaware that that restriction was on his license.

The accident driver’s original Texas driver’s license was a Class “A” CDL issued in January 1993. In September 1997 he applied for and received his Class “B” CDL with an “R” restriction<sup>25</sup>. The restriction was removed on October 31, 1997. On August 27, 2007 he applied for a “P” endorsement, which was granted on September 4, 2007. He had no previous bus or motorcoach driving experience. He indicated on his employment application with Capricorn that he had driven a “straight truck” during previous employment. He listed four previous employers, but did not list the starting and ending dates employed and did not list his specific duties for those employers. Therefore it could not be determined when or for whom he drove a truck.<sup>26</sup>

The driver’s driving history indicates the following violations:<sup>27</sup>

- 09/23/1991 – DUI conviction and probation to include a DUI Education Program
- 06/25/1993 – DUI conviction
- 06/15/1996 – Speeding conviction
- 12/04/1997 – Traffic Accident
- 02/15/1998 – Traffic Accident – Illegal backing
- 04/20/1998 – Following too close conviction
- 04/14/1999 – Traffic Accident
- 09/23/1999 – Traffic Accident
- 11/05/2000 – DUI conviction – refused blood test – 2 yr license suspension from 11/07/2000 to 11/06/2002

None of the above violations\convictions occurred in a commercial vehicle. At-fault designations were not listed on the driver’s history.

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<sup>23</sup> See Attachment #10 - Driver’s Driving History

<sup>24</sup> See Attachment #10(a) - Driver’s Qualification file

<sup>25</sup> An R restriction requires a licensed operator 21 years of age or over in the front seat for a Class B CDL

<sup>26</sup> The driver speaks very little English and was not available for interview beyond the initial interview during the field phase of the investigation.

<sup>27</sup> These convictions did not count toward a disqualification because the statute incorporating DUI and other serious traffic violation convictions to apply for CDL disqualification did not become effective until after the driver’s convictions took place. The statute was not retroactive. 49 CFR 383.51 (a)(3)

The driver was subject to a pre-employment drug and alcohol screen upon his employment with Capricorn that had negative results. He also completed a post-accident drug and alcohol test at 10:30 pm on 01/02/2008. The accident occurred at about 4:13 am on 01/02/2008. The test results were negative.

## **5.2 – Driver’s Hours of Service Records**

Under the provisions of 49 CFR 395 drivers are required to keep a record of their hours of service when working for a motor carrier that includes “off duty”, “driving” and “on-duty not driving” time. This record is kept in a time sheet known as a ‘logbook’. Logbook time is generally kept on a midnight to midnight, 24-hour time frame. The pre-printed logbook pages are structured in 15-minute increments. Drivers are required to keep their time current to the last (most recent) change of duty status<sup>28</sup>. The regularly scheduled departure times from both the Houston and Monterrey terminals was 7:00 pm with an arrival in either Monterrey or Houston about 8 – 9 hours later. Therefore, using the standard midnight-to-midnight format, the starting time would be recorded on one day and the ending times would be recorded on the next day.

Safety Board investigators obtained the accident driver’s logbook pages for October, November, and December 2007 to include January 1 and 2, 2008.<sup>29</sup> The accident driver kept his time on a single page (day) indicating a start time of 7:00 am and an ending time of about 5:00 pm to 6:00 pm on the same day.<sup>30</sup> This constitutes errors in time keeping on the driver’s log and counted against the company’s rating. The Safety Board reconstructed the driver’s logs<sup>31</sup>, using toll and border crossing receipts and passenger lists that included departure times, dates and locations, to indicate the approximate times actually worked.<sup>32</sup> No hours of service violations were noted. The driver did falsify three logs: he failed to record two trips to Monterrey and he failed to record a “turn around” trip. On December 31, 2007 the driver left Monterrey and drove to Freer, TX; normally on this leg of the trip he would have continued to Victoria, TX, a distance of about 60 miles north of Freer. Instead, in Freer he met with another Capricorn driver<sup>33</sup> who was traveling from Houston to Monterrey. The drivers switched buses and the accident driver returned to Monterrey in the southbound motorcoach, while the other driver returned to Houston with the northbound motorcoach. The accident driver logged this trip as if he had continued to Houston instead of returning to Monterrey; thus making it a false log.

In addition, driver log pages for Oct. 12 – 17, Nov. 14, and December 20 were missing; however the trips the driver made on those dates were re-created by the Safety Board from supporting documents.

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<sup>28</sup> 49 CFR 395.8 (f)(1)

<sup>29</sup> See Attachments #11(a), 11(b), and 11(c) Cruz Log Book for Oct., Nov., Dec.

<sup>30</sup> There were three Sundays 10/14/07, 11/11/07, 11/25/07 that were regularly scheduled day runs, which the carrier now said are discontinued.

<sup>31</sup> See Attachments #12(a), 12(b), and 12(c) Reconstructed Log Pages. There are commercially available noon-to-noon pre-printed logbooks available.

<sup>32</sup> See Attachments #13(a) thru (e) - Supporting Documentation

<sup>33</sup> See Attachment #14 - Statements of Jose Rodriguez and Roberto Cruz

## 6. US – Mexico Border Crossing Laredo, TX – Juarez-Lincoln Bridge #2<sup>34</sup>

There are three Border crossing bridges in the Laredo area; the Juarez-Lincoln Bridge, the World Trade Bridge about 10 miles to the south of Juarez-Lincoln Bridge that has a permanent staff of about 12 inspectors, and the Colombia-Solidarity Bridge about 20 miles to the north of the Juarez-Lincoln Bridge that has a permanent staff of about 10 inspectors. The Laredo Field Office has a staff of about 22 persons. Motorcoaches generally cross at the Juarez-Lincoln Bridge, whereas the other two bridges are crossing for trucks and passengers. The Safety Board, in order to make a determination of the motorcoach inspection process at the Mexican-US Border, conducted a three-day survey at the Juarez-Lincoln Bridge facility.

The FMCSA staffs the Juarez-Lincoln Bridge with two shifts per day (Monday thru Friday) from 8:00 am to 12:00 midnight. There are generally two inspectors per shift. There is no permanently assigned staff at this Bridge and the FMCSA does not have a permanent facility at this Bridge. The FMCSA inspectors work out of a converted RV parked near the Customs inspection terminal. Inspectors from the other three FMCSA locations are rotated into duty at the Juarez-Lincoln Bridge for short periods of time. Motor Carrier Inspectors from the Texas Department of Public Safety supplement FMCSA inspections for one or two weeks per month. Inspectors at the bridge facility conduct the Commercial Vehicle Safety Alliance's<sup>35</sup> Standard North American Inspection<sup>36</sup> of vehicles.

Procedures for northbound motorcoaches crossing the Border are generally as follows:

- After proceeding through the Mexican side of the Border, the motorcoach drives into the US Customs and Border Protection Agency's inspection area. This area is a long driveway on the east side of the Border crossing facility.
- Passengers and the driver are off-loaded, including all the luggage and personal carry-on items.
- Passengers and the driver are then processed through the Customs area, where their documentation is examined and their luggage inspected.
- The motorcoach is then subject to a physical examination, sometimes using drug

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<sup>34</sup> See Attachments #15 and #16 - Boarder Crossing Statistics

<sup>35</sup> CVSA is an association of state, provincial, and federal officials responsible for the administration and enforcement of motor carrier safety laws in the United States, Canada and Mexico. Its membership includes all 50 states, the District of Columbia, and all of the 13 Canadian provinces and territories, the country of Mexico, the U. S. Territories of Guam, Samoa, the Virgin Islands and Puerto Rico, and the U.S. Possession of the Northern Marianas. CVSA member jurisdictions are represented by various Departments of Transportation, Public Utility and Service Commissions, State Police, Highway Patrols and Ministries of Transport.

<sup>36</sup> **North American Standard Inspection** - An inspection that includes examination of driver's license; medical examiner's certificate and Skill Performance Evaluation (SPE) Certificate (if applicable); alcohol and drugs; driver's record of duty status as required; hours of service; seat belt; vehicle inspection report (if applicable); brake systems; coupling devices; exhaust systems; frame; fuel systems; lighting devices (turn signals, brake lamps, tail lamps, head lamps and lamps/flags on projecting loads); safe loading; steering mechanism; suspension; tires; van and open-top trailer bodies; wheels and rims; windshield wipers; emergency exits for buses; HM requirements as applicable. HM required inspection items will be inspected by certified HM inspectors.

and explosive detection dogs, and to an all-vehicle X-ray by the Customs officials. This is done via a truck-mounted X-ray machine that is driven alongside the motorcoach at a very slow speed. This procedure is conducted between 6:00 am and midnight only.

- Once the vehicle is released by the Customs agents the vehicle and driver are subject to an FMCSA safety inspection at the end of the driveway.

Customs and Border Protection Service statistics for motorcoaches at the Juarez-Lincoln Bridge indicate about 3,000 per month with an annual average of about 36,000. These are generally Level 2 – Driver only and Level 3 – Vehicle (walk around) inspections. (See Table 1 for inspection counts.) The Safety Board made a count of the motorcoaches crossing the border between 9:00 pm and 5:00 am on three successive nights when the FMCSA was not present and no inspections were conducted. The count was between 40 – 42 motorcoaches per night.

<b>2007</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total Driver\Vehicle Inspections</b>	<b>Driver OOS</b>	<b>Vehicle OOS</b>
<b>October</b>	<b>39</b>	<b>181</b>	<b>47</b>	<b>267</b>	<b>37</b>	<b>20</b>
<b>November</b>	<b>65</b>	<b>189</b>	<b>103</b>	<b>357</b>	<b>30</b>	<b>20</b>
<b>December</b>	<b>132</b>	<b>76</b>	<b>119</b>	<b>327</b>	<b>13</b>	<b>38</b>
<b>TOTAL</b>	<b>236</b>	<b>446</b>	<b>419</b>	<b>951</b>	<b>80</b>	<b>78</b>

Table 1 – Lincoln-Juarez Bridge FMCSA Inspection Count<sup>37</sup>

## **7. Vehicles – Inspection and Registration**

### **7.1 – Annual Inspections**

Federal regulations (49 CFR 396.17) require every commercial vehicle operating in interstate commerce to receive a safety inspection annually by a qualified inspector (49 CFR 396.19). Additionally, many states also require an annual inspection of commercial vehicles. Twenty-two<sup>38</sup> States' inspection programs meet or exceed Federal requirements (49 CFR 396 Appendix B); Texas is one of those States. In Texas inspectors must successfully complete a training program that includes classroom study and practical examination inspecting a vehicle.<sup>39</sup> The course usually covers a two or three day period, depending on the pace of the student. Record must be kept<sup>40</sup> and the Texas Department of Transportation reviews those records periodically. A vehicle, upon successfully passing the safety inspection, is affixed with a state decal<sup>41</sup> on the lower left front corner of the windshield with the date of inspection and the inspector's information written on the back.

<sup>37</sup> See Attachment #16

<sup>38</sup> Alabama, California, Connecticut, Hawaii, Louisiana, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, District of Columbia. Three other states have voluntary inspection programs that meet most the federal requirements; Arkansas, Illinois, Oklahoma.

<sup>39</sup> See Attachment #17 - Texas Vehicle Inspection Requirements

<sup>40</sup> Official records are kept on a State maintained computer server. The inspector "logs" onto the server and enters the inspection information in a pre-established format. Retrieval of the information also accomplished from the server.

<sup>41</sup> See MC Photograph #1.

The vehicles owned by Capricorn had all been inspected in November 2007 at two different locations.<sup>42</sup> The Safety Board interviewed the inspectors at each facility to determine how the inspections were conducted. Each inspector indicated that they followed the Texas guidelines for inspection of motorcoaches. The inspection procedures call for the inspector to inspect the vehicle's undercarriage components for cracked frames, loose steering components, brake adjustment and brake pad size, and other safety items. One inspector, who had inspected four of the five Capricorn Volvos, said that although he did not have an inspection "pit" or hoist, he was able to crawl under the bus to complete the undercarriage portion of the inspection. The other inspector said that he did not inspect the undercarriage components because he did not have the equipment to get under the bus and therefore he was unable to conduct that part of the inspection. He also said that that was a common practice, because a bus (motorcoach) sits too low to the ground to be able to get under the vehicle. All five of the vehicles passed the inspection without any defects being noted.

## **7.2 - Accident Vehicle Inspections**

As noted earlier the carrier did not have a routine maintenance program, but repaired the vehicles on an "as needed" basis. 49 CFR 396.11 and 396.13 requires drivers to conduct a post-trip and trip-trip inspection of their vehicles and to note any defects. In the post-accident FMCSA Compliance Review the auditor noted that the company did not maintain these records for all their vehicles. The NTSB obtained 6<sup>43</sup> of these inspection forms for the accident vehicle (Spanish). None of the inspection forms noted any significant defects. One inspection showed an inoperative tail or brake light.

On 10/20/06 the accident vehicle was subject to a roadside inspection in Victoria, TX. A citation was issued to the driver for an "Unregistered Vehicle" – "VIN 103537 bus has only Mexico Plates [n]o TX permit or registration." The owner of the vehicle noted on the citation was "International Charter Service, Inc." A check with the Judicial Court in Victoria showed that the citation was paid via check<sup>44</sup> for \$143.00. The Court did not inquire as to whether or not the company obtained Texas registration for the vehicle. Per 49 CFR 396.9(d) whenever a motor carrier receives a roadside inspection report listing a violation that is correctable (i.e. inoperable light, tire tread below required depth, etc.) they are to complete the certification of completion on the inspection report and return it to the issuing agency within 15 days of the inspection date. On the reverse side of the Texas DPS inspection report/citation form is an area entitled "Motor Carrier Certification of Action Taken" for which the carrier must complete per Part 396.9(d). The Safety Board contacted the Texas DPS and determined that the State does not keep these kinds of records for State violations and therefore it is unknown if the carrier returned the form.

The accident vehicle was also subject to five FMCSA inspections<sup>45</sup> at the Lincoln-Juarez Bridge facility in 2007. There were three Level 2 inspections and two Level 3 inspections. There were no out-of-service violations noted. It was also subject to one Level 2 roadside inspection on 11/20/2007; No violations were noted.<sup>46</sup>

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<sup>42</sup> See Attachment #18 – Capricorn and International Annual Vehicle Inspections

<sup>43</sup> 09/16/07, 09/20/07, 10/03/07, 12/28/07, 12/30/07, and one undated form. See Attachment #19 DVIR

<sup>44</sup> Court records do not indicate whether it was the driver or the company that paid the fine.

<sup>45</sup> Level 2 – 11/20/07; Level 3 – 05/08/07; Level 2 – 04/09/07; Level 2 – 02/07/07; Level 3 – 01/24/07

<sup>46</sup> See Attachment #20 - Roadside Inspection

## **7.2 – Federal Motor Vehicle Safety Standards**

The Federal Motor Vehicle Safety Standards (FMVSS) were first established in the National Traffic and Motor Vehicle Safety Act of 1966 (49 USC 30115) and the Motor Vehicle Information and Cost Savings Act (49 USC 30254 and 33109). The purpose of the Act was to establish a minimum level of motor vehicle safety in the United States. Motor vehicle safety was defined as:<sup>47</sup>

- The performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes non-operational safety of a motor vehicle.
- "Motor vehicle safety standard" means a minimum standard for motor vehicle or motor vehicle equipment performance.

The Federal agency responsible for establishing these standards was the National Highway Traffic Safety Administration. These standards are found in 49 CFR Part 571. Associated with the FMVSSs is the requirement to affix a certification label to a vehicle with a statement that the vehicle, when manufactured, met the FMVSS standards. 49 CFR 567.1, states in part:

“The purpose of this part is to specify the content and location of, and other requirements for, the certification label to be affixed to motor vehicles as required by the National Traffic and Motor Vehicle Safety Act, as amended (the Vehicle Safety Act) (49 U.S.C. 30115) and the Motor Vehicle Information and Cost Savings Act, as amended (the Cost Savings Act), (49 U.S.C. 30254 and 33109), to address certification-related duties and liabilities, **and** to provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards (part 571 of this chapter),...” [Emphasis added]

This requirement is therefore is twofold: (1) to certify that the vehicle meets the applicable FMVSS requirements and (2) inform the consumer of the same.

49 CFR 571.7 is the section defining the applicability of the FMVSSs. According to the section (cited below) the standards apply to all vehicles operating in the United States, except as noted.

- (a) General. Except as provided in paragraphs (c) and (d) of this section, each standard set forth in Subpart B of this part applies according to its terms **to all motor vehicles** or items of motor vehicle equipment the manufacture of which is completed on or after the effective date of the standard. [Emphasis added]
- (b) (Reserved)

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<sup>47</sup> See 49 USC Sec. 3010, 01/02/2006; TITLE 49 – TRANSPORTATION, SUBTITLE VI - MOTOR VEHICLE AND DRIVER PROGRAMS, PART A – GENERAL, CHAPTER 301 - MOTOR VEHICLE SAFETY SUBCHAPTER I – GENERAL (a) General Definitions.

(c) Military vehicles. No standard applies to a vehicle or item of equipment manufactured for, and sold directly to, the Armed Forces of the United States in conformity with contractual specifications.

(d) Export. No standard applies to a vehicle or item of equipment in the circumstances provided in section 108(b)(5) of the Act (15U.S.C. 1397 (b)(5)).

### **7.3 – Importation Requirements for Vehicles Manufactured in a Foreign Country**

The National Highway Traffic Safety Administration (NHTSA) is responsible for monitoring the importation of foreign vehicles and providing guidance to be followed in determining which vehicles are authorized for importation.<sup>48</sup> Federal Regulations (49 CFR 593, 593 Appendix A, 591, and 592, and 49 USC 30112A and 30115) prohibit the importation of foreign made vehicle into the United States if it does not meet FMVSS standards. In addition, only importers registered with NHTSA are authorized to import foreign-made vehicles into the United States.<sup>49</sup>

The accident vehicle was manufactured in Mexico under European Union (EU) manufacturing standards and not in conformance with the US FMVSS.<sup>50</sup> An NTSB inspection of the accident vehicle revealed it did not have the required certification that indicated conformance with the US FMVSS standards. This non-conformance was confirmed via correspondence with the Volvo representative assisting the NTSB Vehicle Group Chairman.<sup>51</sup> According to Federal regulations once vehicles are registered in the United States, they are classified as “imported” and therefore must meet importation requirements.

The following is a summary of the requirements for importing a foreign-made vehicle into the United States:

The registered importer must:

- Submit Form H-7 *Declaration – Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards*.
- Submit Form HS-474 *Bond to Ensure Conformance With Motor Vehicle Safety and Bumper Standards* (Used for vehicles not conforming. A Registered Importer may alter the vehicle to bring it into conformance and then submit this form.)

The manufacturer must:

- Submit a letter to National Highway Traffic Safety Administration (NHTSA) designating an agent for service of process and a letter from the agent accepting the designation if the manufacturer is not located in the United States (49 CFR 551.45).

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<sup>48</sup> See Attachment #23 - NHTSA Rules and Policies for the Importation of Foreign Vehicles. Also see <http://www.nhtsa.dot.gov/cars/rules/rulings/NAFTA/importation.htm>

<sup>49</sup> See Attachment #24 - Registered Importers

<sup>50</sup> See Attachment #21 - EU Standards and the US FMVSS

<sup>51</sup> See Attachment #32(b)



- Submit to NHTSA information the agency will need to decipher the manufacturer's vehicle identification number or "VIN" format not later than 60 days prior to offering the first vehicle for sale in the United States (49 CFR Part 565, "Vehicle Identification Number Requirements").
- Submit a letter to NHTSA identifying the manufacturer's name, address, and the products it manufactures that are subject to the Federal motor vehicle safety standards, not later than 30 days after manufacturing begins (49 CFR Part 566, "Manufacturer Identification").
- Permanently affix to the vehicle, in a prescribed location, a certification label meeting the requirements of 49 CFR Part 567, "Certification."

### **Vehicle Certification**

Vehicles manufactured in a foreign country and brought into the United States that meet United States FMVSS's must display a certification label that indicates, among other things: (1) the vehicle's manufacturer (i.e., the actual assembler of the vehicle), (2) the vehicle's date of manufacture (month and year), and (3) following statement: **"This vehicle conforms to all applicable Federal Motor Vehicle Safety Standards (FMVSS) in effect on the date of manufacture shown above."** This certification is normally placed on a plate attached to the interior of the vehicle on or near the VIN plate. Vehicles that are eligible for importation are assigned a vehicle eligibility number. This eligibility number is kept on a list maintained by NHTSA. The requirements that manufacturer's must meet in order to import a vehicle are listed in Appendix #23. However,

"NHTSA is not authorized to certify or approve motor vehicles or motor vehicle equipment for compliance with our FMVSSs. Instead, under the National Traffic and Motor Vehicle Safety Act<sup>52</sup>, each manufacturer of a motor vehicle or item of motor vehicle equipment is responsible for certifying that its product meets all of our applicable standards."<sup>53</sup>

In addition, motor vehicle manufacturers are not required to submit to NHTSA, and do not submit to NHTSA, information on whether any particular vehicle they manufacture has been manufactured to comply with all applicable Federal Motor Vehicle Safety Standards. **Moreover, there is no way for NHTSA to discern, from the VIN that has been assigned to a vehicle, or from any other identifying characteristic, whether the vehicle was originally manufactured to comply with all applicable standards. The only way that NHTSA could tell whether a given vehicle has been so manufactured is if the manufacturer has affixed a label to the vehicle certifying its compliance with all applicable standards.**<sup>54</sup> [Emphasis added]

<sup>52</sup> National Traffic and Motor Vehicle Safety Act 1975. That statute has been codified at 49 U.S.C. " 30101, et seq.

<sup>53</sup> NHTSA response letter to Ms. Rebecca Flint – See Attachment #22

<sup>54</sup> NHTSA FAQ on importation of vehicles. See [www.nhtsa.gov/cars/rules/import/FAQ%20site/pages/page2.html](http://www.nhtsa.gov/cars/rules/import/FAQ%20site/pages/page2.html)

49 USC 30112 requires that<sup>55</sup>

*“A person may not manufacture for sale, sell, offer for sale, introduce or **deliver for introduction in interstate commerce**, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title”. [Emphasis added]*

In a 2002 NPRM to the Vehicle Safety Act NHTSA proposed to add to these requirements the definition of “import” as it relates to a foreign-made vehicle brought into the United States<sup>56</sup>

*“Neither the statute nor any agency regulation exempts commercial vehicles domiciled in Canada or Mexico from the requirement that the vehicles must have been manufactured to meet the FMVSSs in order to be imported into the United States.*

*Several other factors also lead us to tentatively reaffirm the 1975 interpretation.*

*First, the interpretation is consistent with the plain meaning of the word "import," which the dictionary defines as meaning "to bring in (merchandise, commodities, workers, etc.) from a foreign country for use, sale, processing, re-export, or services"*

*NHTSA further clarified their terms by saying that “import” – “means [to] bring into the United States, whether on a permanent or temporary basis. This includes, but is not limited to, bringing a vehicle into the United States for the purpose of transporting cargo or **passengers** into the United States.” [Emphasis added]*

This NPRM was withdrawn in 2005. Included in the NHTSA notice of withdrawal of NPRM was the belief that the FMCSRs and the associated CVSA inspection process were sufficient to ensure the “operational” safety of the vehicles on the roadway. The notice also reasoned that the definition of the word “import” was too restrictive and that “...its meaning should be constructed in such a way as to further the goals of congress was seeking to achieve when enacting the law. Congress stated goal in enacting the Vehicle Safety Act was “to reduce traffic accident and deaths and injuries resulting from traffic accidents.” (49 USC 30101)<sup>57</sup> NHTSA concluded that the FMCSA and CVSA inspection process would ensure this safety thus making the proposed NPRM unnecessary.

See the discussion on the FMCSA’s NPRM on this same subject below.

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<sup>55</sup> See Attachment #25 - 49 USC Chapter 301 – Motor Vehicle Safety

<sup>56</sup> See Docket No. NHTSA 02-11593; Notice 1 – Importation of Commercial Motor Vehicles (NPRM).

<sup>57</sup> Federal Register Vol. 67, No. 53 pp. 12782 – 12787, Docket No. FMCSA-01-10886

### **7.3 – FMCSA Rule Making Regarding Non-FMVSS Compliant Foreign Manufactured Commercial Vehicles**

#### **2002 NPRM**

On March 19, 2002 the FMCSA published a Notice of Proposed Rule Making<sup>58</sup> (NPRM) to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to add Subpart 393.8 requiring Canadian and Mexican-based motor carriers to ensure that their vehicles operating in the United States have affixed to them a label indicating that the vehicle met “all applicable Federal Motor Vehicle Safety Standards (FMVSS) (codified in 49 CFR part 571) in effect on the date of manufacturer.” Vehicles lacking this label would be in violation and the Section would be enforceable by FMCSA inspectors.

The CVSA and American Trucking Association (ATA)<sup>59</sup> submitted comments in opposition. Their opposition was based on two broad areas; (1) They presented several practical difficulties in the verification process of conformance to the FMVSSs on vehicles, especially those without an FMVSS statement label, and (2) Their contention that simply not having a label did not ensure that the vehicle was in a safe condition. Their premise was that the measurement of a vehicle’s safety was better determined via the CVSA inspection process, partly due to the inspection process itself and partly because the inspection process was based on the FMCSRs; and the FMCSRs contained several of the FMVSS standards. It should be noted here that not all of the FMVSS standards are included in the CVSA inspection process, such as vehicle stopping distances, that requires a vehicle come to a complete stop in a prescribed distance. (See 49 CFR 571.121)

In support of the NPRM were comments from Greyhound Lines, Inc., and the Advocates for Highway and Auto Safety and the American Insurance Association.<sup>60</sup> Of particular note was the Greyhound position that said:

“We state unequivocally that the vast majority of Mexican-manufactured buses did not comply with the FMVSS when they were manufactured and do not comply with the FMVSS and the Federal Motor Carrier Safety Regulations (FMCSR) now. Many of these buses do not comply with the FMVSS/FMCSR standards for fundamental safety items such as brakes, fuel systems, windows, and emergency exits.”

On 08/26/2005 the FMCSA withdrew the NPRM and agreeing with those in opposition, provided the following reasoning:

*The Federal Motor Carrier Safety Administration (FMCSA) withdraws its March 19, 2002, notice of proposed rulemaking (NPRM), which proposed requiring each commercial motor vehicle (CMV) operating in interstate commerce to display a label*

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<sup>58</sup> Ibid

<sup>59</sup> See Attachment #26(a) - Response Letters to FMCSA NPRM

<sup>60</sup> Ibid

*applied by the vehicle manufacturer or a registered importer to document the vehicle's compliance with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect as of the date of manufacture. We issued the NPRM in coordination with the National Highway Traffic Safety Administration (NHTSA), which published on the same day three companion notices related to the FMVSS certification requirement. Although the NPRM would have applied to all CMVs operated in the United States, its greatest impact would have been on motor carriers domiciled in Canada and Mexico. In withdrawing the NPRM, we conclude the proposed FMVSS certification label requirement is **not necessary to ensure the safe operation of CMVs on our nation's highways**. Vehicles operated by Canada-domiciled motor carriers meet Canadian Motor Vehicle Safety Standards (CMVSSs), which are consistent with the FMVSSs in all significant respects. Furthermore, since the FMVSSs critical to the operational safety of CMVs are cross-referenced in the Federal Motor Carrier Safety Regulations (FMCSRs), FMCSA, in consultation with NHTSA, has determined it can most effectively achieve the compliance of CMVs with the FMVSS through enforcement measures and existing regulations ensuring compliance with the FMCSRs, making additional FMVSS certification-labeling regulation unnecessary. DATES: The notice of proposed rulemaking published on March 19, 2002, at 67 FR 12782, is withdrawn as of August 26, 2005. [Emphasis added]*

In a policy statement dated 08/26/2005<sup>61</sup> the FMCSA provided guidance for the enforcement of foreign manufactured vehicles crossing the border in/or operating in the United States. In part in policy reads:

*“If FMCSA or State inspectors determine through vehicle inspections or during a pre-authority safety audit that Mexico-domiciled motor carriers are operating vehicles not in compliance with the applicable Motor Vehicle Safety standards, FMCSA may use this information to deny, suspend, or revoke a carrier’s operating authority or certificate of registration...”*

*“[The] FMCSA determined, based on information from the Truck Manufacturers Association (TMA), that most model year 1996 and later CMVs manufactured in Mexico meet the FMVSS, regardless of whether the vehicle bears FMVSS certification labels.”*

The policy does not indicate how that non-conformance was to be accomplished.

NHTSA withdrew their companion NPRM on 08/22/2005.<sup>62</sup> In withdrawing their NPRM they stated:

*“It is unlikely that a vehicle built by a European manufacturer to the European standards would have all the safety equipment needed to comply with either the FMCSRs or the FMVSSs. However, according to information provided by the TMA, ...manufacturers have been building their Mexican-domiciled vehicles in conformity with the FMVSSs since the mid to late 1990s... [Therefore] We believe that the vast majority of Mexican-domiciled vehicles engaged in U.S. long haul traffic either carry the label or were originally built to then applicable U.S. standards.”*

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<sup>61</sup> See Attachment #27 - FMCSA Policy on FMVSS Enforcement.

<sup>62</sup> See Federal Register August 26, 2005 Vol. 70, Number 165, pp. 50277-50290 NHTSA Docket 2005-22197

The Safety Board contacted the Truck Manufacturers Association for clarification of the term “CMV” cited in the FMCSA policy statement and notice of withdrawal of their NPRM. The TMA indicated that their communication with the FMCSA was limited to truck manufacturers and did not include motorcoach manufacturers.<sup>63</sup>

The American Bus Association, who did not submit a response to the NPRM, noted in their position paper<sup>64</sup> on this subject that SAFETEA-LU legislation contained a requirement that the FMCSA “...examine the compliance of both Mexican and Canadian vehicles with respect to the compliance to the [US] FMVSS...” The US DOT Office of Inspector General has been monitoring the processes of the FMCSA Border activities since 2001. In their most recent report (August 2007), they again emphasized FMCSA’s lack of enforcement of the FMVSS on vehicles crossing the Border. One of their Recommendations was that the “FMCSA needs to implement its policy on Mexican carrier compliance with the motor vehicle manufacturing safety standards.”

The Safety Board noted in the FMCSA NPRM paragraph discussion entitled *U.S. Consultations With Canada and Mexico About the Vehicle Safety Act*, that the Mexican vehicle manufacturers indicated that since 1994 most commercial vehicles built in Mexico met the FMVSS. They indicated that there were about 400,000 CMVs built and operating in Mexico and about 130,000 may comply with the United States FMVSS’s but do not have a certification label stating such, because it is not required in Mexico. It was not estimated how many of these Mexico-manufactured vehicles may have entered and are operating in the United States. It also did not differentiate between trucks and motorcoaches.

### **2007 Demonstration project**

In May, 2007 the FMCSA published a Notice: “Request for Public Comment” for “Demonstration Project on NAFTA Trucking Provision” wherein they proposed a program of allowing Mexican-domiciled carriers to enter the United States and operate therein under specified conditions.<sup>65</sup> One of those conditions was that carriers had to certify that the vehicles they brought into the US conformed to the FMVSSs.

In August 2007, the program was initiated; however, the FMCSA, based on their reasoning in the 2005 withdrawal of the 2002 NPRM, indicated that verification of this requirement was only to be accomplished via declaration by the carrier that the vehicles they were intending to bring into the US met FMVSS requirements.<sup>66</sup> It should be noted here that no passenger carriers or hazardous materials carriers were included in the Demonstration Project; it only included cargo-carrying trucks.

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<sup>63</sup> See Attachment #28 –TMA Information of Imported Vehicles

<sup>64</sup> See Attachment #29 - ABA Position Paper, Safety-LU Requirement, and 2007 OIG Recommendation.

<sup>65</sup> See Attachment #30 - FMCSA Demonstration Project

<sup>66</sup> See Attachment #33 - VIN Decoding Information

## **VIN Verification Software**

In 2006 the FMCSA contracted with the National Institute for Safety Research, a private corporation, to develop a VIN verification computer program that would indicate if a vehicle was FMVSS compliant. The program (*FMVSS Border Check*) was “beta” tested in 2006. The FMCSA indicated that the program was tested for inclusion in the ASPEN<sup>67</sup> software and after its initial testing was incorporated in ASPEN and the “beta” version was discontinued.

The Safety Board contacted the National Institute for Safety Research (NISR) to determine the protocol for the FMVSS Border Check program. It was determined that the FMVSS Border Check program was developed for the FMCSA as a quick check on vehicles that provided certain information about a vehicle from a VIN decoding process. NHTSA regulations require that a vehicle’s identification number (VIN) contain a specific numbering and letter sequencing where each number and/or lettering sequence represents specific information regarding that vehicle. This information contains information such as:<sup>68</sup>

1. Country of origin (manufacture),
2. Make of vehicle,
3. Year of vehicle,
4. Gross vehicle weight rating, and
5. VIN sequencing verification.

The VIN verification had two components: (1) correct sequencing and (2) FMVSS compliant. To determine the potential of FMVSS compliance the software used the 10<sup>th</sup> position in the sequence of the VIN. The 10<sup>th</sup> position in the VIN is designated for the model year of the vehicle and is represented by a specific number or letter.<sup>69</sup>

The NISR indicated that the FMVSS component only verified the decoded information on the VIN. In addition, any Mexico-manufactured vehicle prior to 1996 was deemed “non-conforming” and vehicles manufactured after 1996 were deemed “conforming.” As of the writing of this report, the FMCSA has not responded to the Safety Board’s request for the reason for the 1996 date. Therefore the number or letter designator for the years 1996 and forward were blanket-coded as being compliant with the FMVSSs.

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<sup>67</sup> ASPEN (is the computer program used by both State and Federal inspectors for recording the results of a roadside inspection.

<sup>68</sup> VIN Decode - 17 digit VIN numbers can be decoded by breaking it first into 6 fields and then using the decode tables below to translate the VIN (vehicle identification number) into a description. Several of the fields are manufacturer specific and are not included in the tables below:

1. Character #1, length 3 of the VIN number is the World Manufacturer Identifier (WMI) the first character is the country, the next 1 or 2 designates the manufacturer.
2. Character #4, length 5 of the VIN number is the body style or features, which varies by manufacturer
3. Character #9, length 1 of the VIN number is a check digit, which helps programs verify that the VIN has been entered accurately
4. Character #10, length 1 of the VIN number is the model year
5. Character #11, length 1 of the VIN number identifies the assembly plant
6. Character #12, length 6 of the VIN number is the manufacturer sequence number

<sup>69</sup> See Attachment #33 - VIN Sequence

The Safety Board determined that US domiciled passenger carriers utilize vehicles that are Mexican registered and plated and are not registered in any US State. The FMCSA's inspection criteria policy is that if a carrier has US operating authority, as indicated by the US DOT number found on the side of the vehicle, that neither the state or country of registration or the vehicle's conformance with the FMVSSs, is not an issue in their current inspection process. This is mainly due to the lack of legal authority to enforce this provision of the FMVSSs.

### **7.3 – State Requirements for Registering Vehicles Manufactured in Foreign Countries in the US**

The process of vehicle **registration** (licensing) is a State function, therefore NHTSA has indicated that they are not responsible for regulating the operation of motor vehicles on public roads in the U.S. or for titling or registering motor vehicles for such operation. Some States may require a manufacturer's certificate of origin (MCO) or manufacturer's statement of origin (MSO) to register a new motor vehicle. These are not federally required documents. Therefore the states determine the requirements for vehicle registration in each of their respective jurisdictions. The Safety Board contacted the four southern Border States to determine if they require vehicles to meet FMVSS requirements for registration: all did. The American Association of Motor Vehicle Administrators (AAMVA) maintains resource material for these and other forms per individual state requirements.<sup>70</sup> However, these requirements only applied to non-apportioned (IRP) vehicles<sup>71</sup>. [See discussion below on IRP registration]

The accident vehicle was purchased in Mexico by the owner of Flores and brought into the United States (Texas) and then registered in California. The California requirements for registering a non-IRP (apportioned) foreign-made vehicle are as follows:<sup>72</sup>

An application for the registration of an imported vehicle **must** include the following customs, safety, and emissions standards:

- Evidence the vehicle has cleared U.S. Customs. U.S. Customs forms 7501, 3461, 6059, 3299, or 3311, stamped or endorsed by U.S. Customs are acceptable.
- Evidence of compliance with U.S. Federal Motor Vehicle Safety Standards (FMVSS) unless the vehicle is 25 or more years old. Satisfactory evidence is one of the following:
  1. The Federal Certification Label affixed to the vehicle certifies the vehicle conforms to all U.S. Federal Motor Vehicle Safety Standards (FMVSS) or
  2. A copy of the letter from the manufacturer certifying the vehicle complies with U.S. FMVSS and U.S. Emissions Standards. (**This is usually attainable only for vehicles from Canada.**)

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<sup>70</sup> They can be contacted at 703-522-4201 or on their website at <http://www.aamva.org>. Also see Attachment #31(b) Registration Requirements of Arizona, New Mexico, and Texas

<sup>71</sup> A non-apportioned vehicle registration is where the registration fees are assessed for the home state only. An example is a privately owned passenger vehicle.

<sup>72</sup> E-mail from California Department of Motor Vehicles, Registration Policy Development .

- **NOTE:** A manufacturer's letter that states, "the vehicle complies with U.S. FMVSS and U.S. Emissions Standards except for minor labeling" is acceptable. The Technical Compliance Section will determine if there are additional requirements.
- A copy of the U.S. Department of Transportation (DOT) bond release letter issued by the National Highway Traffic Safety Administration (NHTSA).
- A Certificate of Conformance issued by a California Air Resources Board (ARB) licensed laboratory.
- Evidence of compliance with U.S. EPA and/or California emission standards. Any of the following are acceptable:
  1. A U.S. EPA and/or California emission label affixed to the vehicle.
  2. A Certificate of Conformance issued by a laboratory licensed by the ARB. No smog certification is required if this document is submitted for original registration.
  3. A letter from the manufacturer stating the vehicle complies with U.S. FMVSS and U.S. Emissions requirements (usually only attainable for Canadian vehicles).
  4. If the vehicle is a 1968 or newer year model auto or commercial vehicle or a 1978 or newer year model motorcycle that does **not** comply with U.S. emission requirements and/or is a vehicle less than 25 years old that does **not** comply with U.S. FMVSS, refer the customer to the ARB at (800) 242-4450 or e-mail at helpline @ *arb.ca.gov* .
- **NOTE:** A manufacturer's letter that states "the vehicle complies with U.S. FMVSS and U.S. Emissions Standards except for minor labeling" is acceptable. The Technical Compliance Section will determine any additional requirements.
- **Direct Import Vehicles**— Determine if the vehicle record **must** be branded "NON-USA" from the following table.

If...	then the vehicle record...
the vehicle <b>has</b> a U.S. Federal Certification Label (safety label) <b>and</b> a U.S. emission label affixed to it by the manufacturer	is <b>not</b> branded "NON-USA."
the vehicle <b>does not have</b> a U.S. Federal Certification Label (safety label) <b>or</b> a U.S. emissions label affixed to it by the manufacturer	<b>must</b> be branded "NON-USA."
available information indicates someone other than the manufacturer affixed the emission or safety label to the vehicle (a registered importer, an ARB laboratory, or an independent commercial importer, for example)	Key a "G" in the PRIOR HIST field on the DATA COLLECT screen and suspend the application to the Technical Compliance Section (TCS) in Sacramento Headquarters.

- A smog certification, if normally required.



- Collect the fees due and issue a Temporary Operating Permit (REG 19) in accordance with *Registration Manual* §9.010.
- Suspend all applications to the Technical Compliance Section (TCS), Registration Processing Unit (RPU) I, in Sacramento Headquarters. The TCS will determine if any requirements are needed and contact the customer directly.

### **IPR Registration**

The Safety Board contacted the California Department of Motor Vehicles (CA DMV) regarding the accident vehicle's registration. The CA DMV indicated that the vehicle was registered in California under the International Registration Plan (IRP)<sup>73</sup> and therefore there were different rules (from those listed above) for registration of commercial vehicles that were going to use their vehicles in interstate commerce.

The IRP is a registration organization that permits a motor carrier to register their commercial vehicles in one state and operate in several or all other states or Canadian Provinces. The carrier estimates the amount of time (or miles) they will be operating in any state or Province where their vehicles travel. The registration fee is then "apportioned" to those states by the home state completing the registration based on vehicle usage in those states. The vehicle(s) is then issued the home state's license plate which is embossed "Apportioned" indicating to enforcement personnel that the vehicle has registered and paid registration fees in the states listed on the registration (cab) card.

The Safety Board obtained a copy of the California IRP Handbook<sup>74</sup> that listed the following items required for IRP registration in California.

- California Carrier Information
- Established Place of Business (in California)
- California IRP Vehicle Data
  1. VIN number
  2. License number
  3. Vehicle make and model
  4. Vehicle operating weight
- Proof of Payment of the Federal Heavy Vehicle Use Tax
- Agreement to Prepare and Maintain Records and Report Information in Accordance With the International Registration Plan and California Apportionment Requirements
- VIN Verification
- Evidence of the International Fuel Tax Registration

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<sup>73</sup> The International Registration Plan (IRP) is a federally encouraged program to facilitate commercial vehicle registration and operation among states and Canadian jurisdictions. The IRP permits a carrier to register their vehicles in one state and operate in several or all other states or Canadian Provinces. The carrier estimates the amount of time (or miles) they will be operating in any state in which their vehicles travel. The registration fee is then "apportioned" to those states through the "base state" completing the registration. The vehicle(s) is then issued the base state's license plate which is embossed with the word "Apportioned" indicating to enforcement personnel that the vehicle has registered and paid fees in the states listed on the registration (cab) card. This is an optional method of registration for commercial vehicles only.

<sup>74</sup> See Attachment #31(a) - Excerpts from California International Registration Plan Handbook, 2006.

- Vehicles Must Be Free of Any Preexisting Law Enforcement Violations and Vehicle License and Titling Stops.

The Safety Board obtained the documentation that was used to register the accident vehicle<sup>75</sup> and three other vehicles owned by Capricorn in California.<sup>76</sup> All the documentation was present except for a VIN verification. The Board then contacted the California IRP to determine how VIN verifications are conducted in cases such as the registration of the accident vehicle. The IPR indicated that a VIN verification consists of two parts:

- 1) Compare the VIN on the registration or title with the VIN on the vehicle, and
- 2) Conduct a VIN check using a California populated database to determine if any “negative” entries (theft, collisions, non-paid fees, etc.) were listed.
- 3) If the VIN on the vehicle and documents compared favorably and there were no negative entries in the database, this requirement was deemed ‘satisfied’.

However, in the case where the vehicle is not physically inspected, as many are not, the element of the physical examination of the VIN verification process is not conducted. The reason given for not physically comparing the VIN plate on the vehicle with the documentation is that the vast majority of IRP applicants’ have some vehicles that are not operated in California or not otherwise available for inspection. Physical inspections of vehicles for this purpose are also labor and resource intensive.

### **Accident Vehicle US Registration Process**

The Safety Board determined the process by which the accident vehicle was registered in California and then subsequently registered in Texas. That process is as follows:

- a) The vehicle was purchased by the accident carrier (a US-domiciled company) in Mexico in April 2006 and registered at an address in Monterrey, Nuevo Laredo, MX<sup>77</sup>
- b) The vehicle received a Mexican title, registration, and license plate.
- c) The company then leased the vehicle to International Charters and was operated under their US DOT number.
- d) The vehicle was then driven across the border and was not inspected for FMVSS compliance (See FMCSA inspection process below).
- e) The vehicle operated in a line-run from Houston to Monterrey on a regular basis.
- f) In October 2006 the vehicle was cited by the Texas DPS for no Texas registration (Mexican registration only).
- g) The company paid a fine, but was not required to register the vehicle in Texas/

Capricorn then enlisted the services of the owner of Green River Buses in Dallas TX.

- h) The owner of Green River obtained the vehicle’s documentation necessary for IRP registration in California.

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<sup>75</sup> See Attachment #32 - Accident Vehicle Registration Information

<sup>76</sup> See Attachment # 32(a) - Additional Capricorn Vehicles Registered in California

<sup>77</sup> The owner’s permanent residence is in Houston, Texas.

- i) The owner of Green River represented himself as the “Safety Manager”<sup>78</sup> for Capricorn on the documents he submitted to California.
- j) The owner of Green River then represented that Capricorn was domiciled in Los Angeles CA and provided two “Rent Receipts” (\$850 and \$350) for that address as verification of Capricorn’s business address.
- k) He then sent the documents to a private registration company in Long Beach CA, requesting CA IRP registration.
- l) The private registration company processed the documentation through the CA IRP.
- m) The “apportioned” license plate and California IRP registration (cab card) were mailed to the private registration company in Long Beach CA.
- n) The company in Long Beach forwarded the license plates and registration to the address in Los Angeles.
- o) The owner of the company at the Los Angeles address sent the registration material to the owner of Green River, in Dallas TX.
- p) The owner of Green River, after a short period of time, re-registered the vehicle in Texas.
- q) Texas accepted the California registration on face value and registered the vehicle. The Texas registration is a non-apportioned registration, and therefore less expensive.

The results were that the vehicle retained its’ Mexico title of ownership but the vehicle was domiciled in the US with US ‘apportioned’ plates and (on its’ face) legal to operate in any state listed on the cab card.

The Safety Board contacted the owner of Green River and discussed the registration process. He indicated that he registered the vehicles in California because they only asked for a few documents. He said he used the Los Angeles address because he knew the owner. He said the company at that address was Luna Tours. The Safety Board queried the FMCSA SAFER web cite ([www.safer.org](http://www.safer.org)) and determined the only Luna Tours in California showed an address in Victorville, CA.<sup>79</sup> However, a web search of the name “Luna Tours” revealed two addresses in Los Angeles, one of which was the address indicated on the Capricorn accident bus registration, but physically occupied by Salcido Tours. The owner of Salcido Tours indicated that he knew the owner of Luna Tours, but that the actual location of the company was in Chicago, IL or Denver, CO. He said he believed the address in Victorville, CA was a relative’s home address and not a business location. The owner of Green River told Safety Board investigators that he has assisted about 20 companies to register their vehicles in California using this process.

This process of registering motorcoaches in California and then transferring the registration to Texas bypasses the normal, or regular registration process that newly registered, non-apportioned vehicles would have to undergo. The normal registration process would require a verification of FMVSS compliance, usually accomplished by a physical inspection of the VIN plate that contains the required FMVSS compliant statement. The process also bypasses importation processes and requirements for bringing a vehicle permanently into the US.

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<sup>78</sup> The owner of Green River told the Safety Board that he is not an employee of Capricorn. He only receives a fee for the service he performs for registering the vehicles.

<sup>79</sup> See Attachment #8 - Luna Tours. Luna Tours has a US DOT # 1403626.

The Safety Board contacted the three other southern Border States (Arizona, New Mexico, and Texas) to determine their IPR registration processes. With the exception of Arizona that physically checks vehicles with Mexican titles, no state agency inquires or verifies in any way whether or not an IRP applicant vehicle conforms to the US FMVSSs.

**END OF REPORT**

Gary Van Etten

Motor Carrier Group Chairman